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April 17, 1992

Mrs. Ruth Downs Sullivan
Attorney at Law
605 Market Street
San Francisco, CA 94105

Re: Change in Ownership-Joint Tenancy and
Original Transferors

Dear Mrs. Sullivan:

This is in response to your letter of March 20, 1992, to Mr. Richard Ochsner, Assistant Chief Counsel, in which you request our opinion and analysis regarding whether a property located at _____ with a parcel number _____ is subject to reassessment as a change in ownership for property tax purposes at this time. The facts are taken from your letter and our phone conversation.

_____ and _____ held the subject property as joint tenants and were "original transferors". When _____ died on February 17, 1978, there was no reassessment. _____ died on November 27, 1986, leaving a surviving spouse, _____ there was no reassessment.

On February 17, 1987, _____ transferred the property into a joint tenancy between himself and _____. _____ gave no consideration for the transfer into the joint tenancy. This transfer did not cause a reassessment. _____ died on May 26, 1991, leaving _____ as sole owner of the property.

Your position is that there should be no reassessment because _____ is an original transferor pursuant to Revenue and Taxation Code Section 65(b) (all section references contained herein are to the Revenue and Taxation Code unless otherwise stated). Also, you point to section 65(c) which provides that property shall be reappraised unless it vests "... in any remaining original transferor, in which case there should be no reappraisal." You state that the Assessor's Office proposes to reassess the property as a result of the termination of Milo's interest in the joint tenancy.

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Section 65 provides:

- (a) The creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63. Upon a change in ownership of a joint tenancy interest only the interest or portion which is thereby transferred from one owner to another owner shall be reappraised.
- (b) There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. The spouses of original transferors shall also be considered original transferors within the meaning of this section.
- (c) Upon the termination of an interest in any joint tenancy described in subdivision (b), the entire portion of the property held by the original transferor or transferors prior to the creation of the joint tenancy shall be reappraised unless it vests, in whole or in part, in any remaining original transferor, in which case there shall be no reappraisal. Upon the termination of the interest of the last surviving original transferor, there shall be a reappraisal of the interest then transferred and all other interests in the properties held by all original transferors which were previously excluded from reappraisal pursuant to this section.
- (d) Upon the termination of an interest held by other than the original transferor in any joint tenancy described in subdivision (b), there shall be no reappraisal if the entire interest is transferred either to an original transferor or to all remaining joint tenants, provided that one of the remaining joint tenants is an original transferor.
- (e) For purposes of this section, for joint tenancies created on or before March 1, 1975, it

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shall be rebuttably presumed that each joint tenant holding an interest in property as of March 1, 1975, shall be an "original transferor." This presumption is not applicable to joint tenancies created after March 1, 1975.

With the death of _____ in 1978 and the death of _____ on November 27, 1986, the original joint tenancy terminated and _____ became the sole owner of the property as of the date of Dominic's demise. Thereafter, _____ acquired an interest in the subject property by becoming a joint tenant with _____ on February 17, 1987. This transfer created a second joint tenancy in which _____ held a joint tenancy interest for the first time.

It is true that Section 65 (b) provides that the spouse of an original transferor is considered to be an original transferor. This does not automatically create a joint tenancy interest in the spouse, however. What it means is that a spouse who acquires an interest in the joint tenancy will enjoy the status of an original transferor. Thus, had _____ become a joint tenant when _____ did, or at sometime during his lifetime, she would have qualified as an original transferor in the joint tenancy created by _____ and _____ did not, however, acquire any interest in the original joint tenancy during its existence. Since she never acquired an interest in the original joint tenancy, either initially or during lifetime, she could not qualify as an original transferor in that joint tenancy.

What _____ acquired was an interest as joint tenant in a second joint tenancy created in 1987 when _____ as the sole owner transferred the property to himself and _____ as joint tenants. Since this was a second joint tenancy in which _____ acquired her interest in her individual capacity and not through _____ (_____ was then his widow, not his spouse), she could not qualify as an original transferor under Section 65. Thus, when _____ (who was the only original transferor in this second joint tenancy) died in 1991, the joint tenancy terminated and the property was subject to 100% reappraisal pursuant to subdivision (c) of Section 65, which requires reappraisal of the "entire portion of the property held by the original transferor", _____ upon termination of the joint tenancy.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. Thus, you may wish to consult further with Mr. Jine of the San Francisco County Assessor's Office in this regard.